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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CHRISTOPHER M. ADAMS, Plaintiff and Respondent, v. DAVID TOPOLEWSKI et al., Defendants and Appellants.	B230364 (Los Angeles County Super. Ct. No. BC382058)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mary Strobel, Judge. Affirmed in part, reversed in part.

Zuber & Taillieu, Jeffrey J. Zuber for Defendants and Appellants.

Baker, Keener & Nahra, Robert C. Baker and Laurence C. Osborn for Plaintiff and Respondent.

In this business dispute among partners, Hong Mu and David Topolewski appeal from a judgment in which the court awarded more than $62 million to their partner, Christopher Adams, following an uncontested bench trial. The $62 million represents the value of Adams's 19.7 percent interest in educational technology companies that produce and market English language tutorial programs in China. Mu and Topolewski seek a reversal of the judgment on the grounds that they did not have actual notice of the trial, and the trial court erred in relying on an improper method to value Adams's minority interest in the companies. Because the trial court erred as a matter of law by solely relying on an improper valuation method, we reverse and remand for a new trial on valuation. We affirm the judgment in all other respects as appellants had notice of the trial.

FACTS[1]

1. *Adams's 19.7 Percent Interest in the Companies*

In 2000, Adams invested in a business venture with Mu and Topolewski to develop an educational technology company to market English language training programs in China. Adams, Mu, and Topolewski formed Educational Resources Acquisitions (ERA) and were equal partners. Adams also received a salary from ERA, which he agreed to defer until the partners raised additional capital.

The partners also formed a company eventually called C-Interchange, Inc. to sell the English language training programs ERA developed. The company sold the product to a division of the Ministry of Education of China (MOE).

In 2001, the partners formed a new company, English Xchange, Inc. that absorbed ERA and C-Interchange, Inc. They agreed that Adams would own 19.7 percent of non-

[1] We recite these facts in the light most favorable to the judgment. (*Mammoth Lakes Land Acquisition, LLC v. Town of Mammoth Lakes* (2010) 191 Cal.App.4th 435, 462-463.) Mu and Topolewski have moved to augment the record. We deny the motion. The court orders already appear in the record, and this court has been provided with a certified copy of the reporter's transcript.

dilutable shares of every entity and any ongoing enterprise, and Mu and Topolewski would own 80.3 percent, dilutable by additional capital.

Unbeknownst to Adams, in 2001 Mu and Topolewski raised venture capital through a newly formed entity, English Exchange Pte Ltd. (EXPL). Despite the partners' agreement, Adams was not listed as an EXPL shareholder. When Adams discovered the omission, Topolewski told Adams he was a shareholder, and that Adams held 260,000 AA preferred non-dilutable shares in EXPL.[2] Despite numerous requests, Adams never received confirmation of his equity interest in EXPL.

Adams also learned through other sources that EXPL was the sole shareholder in English Exchange Hong Kong Limited. That company owned 80 percent of Wen He Education Technology Co. Ltd., also known as Beijing Education Xchange Technology Co. Ltd., or B.E.X.T. EXPL also owned the domain name of the company Qooco, Inc., Qooco.com. Adams testified that he believed EXPL received the revenues generated by Qooco, Inc. and B.E.X.T.

2. *Investments in ERA, English Xchange, Inc.*

Adams secured venture capital for both ERA and English Xchange, Inc. The Christopher Adams Trust loaned ERA $95,262.56, and English Xchange, Inc. $76,524. Adams's family's investment company, Morgan Adams, Inc., loaned ERA $100,000. And DVA Inc., a corporation wholly owned by Adams's father, loaned ERA $296,000. Although the loans were past due, Topolewski reassured Adams that he would carry the debt on the books of any subsequent entity. At the time of trial, the principal and interest of these outstanding loans totaled $1,009,049.61.

[2] Adams testified that 260,000 shares of AA preferred non-dilutable stock in EXPL represented an 8 percent interest in the entity, not a 19.7 percent interest. The trial court, however, concluded that Adams held a 19.7 percent interest in EXPL. That factual finding is not challenged on appeal.

PROCEEDINGS

1. *Operative Complaint*

Adams, David V. Adams, Trustee of the Christopher Adams Trust, DVA Inc., and Morgan Adams, Inc. filed suit against Mu, Topolewski, ERA, C-Interchange, Inc., English Xchange, Inc., EXPL, and Wen He Education Technology Co. Ltd.[3] seeking to recover as economic damages Adams's 19.7 percent interest, the principal and interest on the outstanding loans, and Adams's unpaid salary. The first amended complaint (operative complaint) asserted causes of action for fraud, constructive fraud, unjust enrichment, breach of fiduciary duty, and breach of contract. In addition to economic damages, the operative complaint also sought punitive damages.

2. *Mu's and Topolewski's Attorney Withdraws Before Trial*

On April 19, 2010, after several years of litigating this action, the court set trial for August 3, 2010, and set the final status conference for July 29, 2010.

About a month after the court set the trial date, Mu's and Topolewski's attorney sought to be relieved as counsel.[4] In connection with the withdrawal motion, their attorney represented to the court that he had served the motion by e-mail and also by mail to the Singapore address his clients gave him.[5] The declaration, submitted with the motion and served on his clients, stated under penalty of perjury that their attorney had confirmed within the past 30 days that the Singapore address was current, and also gave notice of the upcoming final status conference and trial. The order granting the motion to

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[3] Before trial, English Xchange, Inc. and C-Interchange, Inc. were dismissed without prejudice.

[4] We grant Adams's motion to augment the record.

[5] At the hearing on the motion, the court asked the attorney whether he had heard from his client. Thereafter the court asked: "[Y]ou did confirm by e-mail that you were sending to the correct address? [¶] [Counsel]: I did. I contacted them by e-mail, and this is the address they gave me. It's that Singapore address." The Singapore address is: "David Topolewski [¶] Hong Mu [¶] English Xchange Pte Ltd [¶] Beijing Education XChange Technology Co. Ltd. [¶] 50 Raffles Place [¶] #32-01 Singapore Land Tower [¶] Singapore 048623."

be relieved as counsel listed the trial date and was served by mail on Mu and Topolewski at the Singapore address.

Mu and Topolewski did not appear at the final status conference on July 29, 2010. The court noted their absence, and reviewed the file indicating notice had been served on July 13, 2010, in connection with the order granting their attorney's motion to be relieved as counsel.

During the final status conference, the trial court moved the trial date from August 3 to August 19, 2010. The court asked Adams's counsel to give notice, stating this additional notice would be "another round of notice to the defendants." On July 29, 2010, notice of the August 19, 2010 trial date was served by mail on Mu and Topolewski at the Singapore address, and also served via e-mail to Topolewski's last known e-mail address.

3. *Uncontested Bench Trial*

On August 19, 2010, Mu and Topolewski did not appear for trial. The court was informed that Mu and Topolewski had been served at the Singapore address, but Topolewski's e-mail address had been shut down and was no longer in service. After examining the proof of service, the trial court concluded that Mu and Topolewski had been given notice and conducted the trial. We limit our discussion of the evidence presented at trial to the valuation of Adams's 19.7 percent interest in EXPL.

a. *Expert McNulty's Method to Value Adams's 19.7 Percent Interest*

Economist Jennie McNulty used what she described as the "enterprise value to revenue ratio" method to value Adams's interest. McNulty explained that she obtained the sale price (fair market value) of public companies and determined the ratio of sale price to revenue to obtain a multiple ranging from 3.0 to 1.53. For example, McNulty identified a public company similar to EXPL that sold for $92 million with revenue of $60 million to obtain a 1.53 ratio. McNulty then multiplied EXPL's projected 2010 revenues of $121 million, as stated in its 2006 business prospectus, by 1.5 to value EXPL at $186.1 million. McNulty also used a 2.6 multiple to value EXPL at $318.7 million. Despite these calculations, McNulty testified that she could not render an opinion on the

value of EXPL. The court permitted Adams to provide additional expert testimony on the value of his minority interest.[6]

b. *Expert Vavoulis's Method to Value Adams's 19.7 Percent Interest*

Economist Ted Vavoulis, McNulty's partner, rendered an opinion on EXPL's value by using what he described as the "direct public company method." Using this method, Vavoulis analyzed financial statements of public companies to obtain a multiple to value EXPL. Vavoulis derived a multiple by looking at these businesses and "find[ing] that the median multiple of revenues for their evaluation is about 2.6." Like McNulty, he used EXPL's projected 2010 revenues of $121 million as stated in the 2006 business prospectus to value EXPL at more than $318 million, calculating Adams's 19.7 percent at approximately $62 million. Vavoulis compared EXPL's projected revenue with the average revenues of similar public companies as a check against his valuation method because he did not have EXPL's actual revenue. He also noted that the market was vibrant and growth rates of competitors were approximately 35 percent per year.

The court asked Vavoulis if he had obtained financial documents or other information not available to McNulty. Vavoulis responded that the only difference in his analysis was updated information on competitors, and he found documents showing Qooco.com had obtained $27 million from investors.

Vavoulis used the same 2.6 multiple that McNulty used and attempted to distinguish his valuation method from McNulty's by referring to the "standard of the valuation," and the "premise of the valuation." As Vavoulis explained, the "standard" is the reason for the valuation, in this case, litigation. The "premise of the valuation" is the assumptions that he had to make to value the company based upon available documentation. According to Vavoulis, "the premise is to come up with a valuation based on what is available and what independent research can be done within obvious constraints of resources."

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[6] On August 20, 2010, Adams served notice by mail to the Singapore address and via e-mail that the trial would be continued to September 10, 2010. Mu and Topolewski did not appear on September 10, 2010.

After describing this distinction, the court asked Vavoulis how confident he was in his valuation. Vavoulis responded: "The confidence level of the person in my position giving an opinion about valuation has to go back to the premise because otherwise we don't have anything from which to determine what these valuations are. [¶] In a perfect world we would have all kinds of documentation of a financial nature to look at but we have none of it. [¶] So I unfortunately my answer has to go back to the premise, the premise is that we are dealing with available documentation." Thereafter, Vavoulis stated he had a high level of confidence in the revenues of similar public companies, but not in EXPL because he lacked financial information.

c. *Adams's Testimony on Valuation*

Adams disagreed with Vavoulis's and McNulty's valuation, placing a higher value on EXPL. Adams criticized Vavoulis and McNulty because they relied on projected earnings and overlooked EXPL's revenue stream, outstanding contracts with the MOE, and an influx of venture capital. According to Adams, the MOE contracts alone would generate $400 million a year, far exceeding the projected revenue used by Vavoulis and McNulty. Adams also testified that individual investors had committed $100 million to take the company public.

4. *Judgment, Appeal*

The court adopted Vavoulis's valuation. The judgment awarded Adams $62,784,000.[7]

Adams's attorney served notice of entry of judgment by mail to Mu and Topolewski at the Singapore address on November 22, 2010, and by e-mail, reflecting

[7] Although not challenged on appeal, Adams was awarded $424,655.69 in unpaid salary, and $18,090 in costs incurred in pursuing his claims against EXPL. The judgment awarded DVA Inc. $516,112.53 in principal and interest against EXPL, plus costs in the amount of $102,235.25. Morgan Adams, Inc. was awarded $203,875.63 in principal and interest, plus costs in the amount of $9,335.75, and David V. Adams, Trustee of the Christopher Adams Trust, was awarded $292,870.93 in principal and interest, plus costs of $120,741.75. The trial court did not award punitive damages, finding Adams did not meet his standard of proof to show malice, oppression, or fraud.

that judgment was entered on November 19, 2010. Costs were added to the judgment on March 10, 2011.

Mu and Topolewski, in propria persona, separately filed timely notices of appeal.

Represented by counsel on appeal, Mu and Topolewski seek to set aside the judgment on the grounds that they did not get notice of the August 19, 2010 trial, and even if they had notice, they seek reversal of the portion of the judgment awarding Adams more than $62 million. They do not challenge the trial court's factual determination that Adams has a 19.7 interest in EXPL (and any related entity), or any other economic damages or costs awarded in the judgment against them.

DISCUSSION

1. *Mu and Topolewski Received Notice of the Trial Date*

Mu and Topolewski contend the trial court violated their right to due process by conducting the trial in their absence because they did not receive notice of the continued trial date of August 19, 2010. Notice was sufficient.

The due process clauses of the United States and California Constitutions require that a party be given reasonable notice of a judicial proceeding. (*In re Marriage of Goddard* (2004) 33 Cal.4th 49, 54.) This notice requirement is codified in Code of Civil Procedure section 594, subdivision (a), which states that a party may proceed in the absence of an adverse party with a trial that involves issues of fact if proof is made to the court that "the adverse party has had 15 days' notice of such trial. . . ." Under subdivision (b), if notice is sent by a party, proof may be made by introduction into evidence of an affidavit or certificate (of service) pursuant to subdivision (1) or (2) of Code of Civil Procedure section 1013a or other competent evidence. Subdivision (a) of Code of Civil Procedure section 1013 describes service by mail and requires the notice or other paper shall be deposited in a post office or mailbox in a sealed envelope with postage paid, "*addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service by mail*. . . ." (Italics added.)

In *Au-Yang v. Barton* (1999) 21 Cal.4th 958, the court reiterated that the 15-day notice period in Code of Civil Procedure section 594, subdivision (a) is mandatory. (*Au-Yang v. Barton*, *supra*, at p. 963.) In that case, the issue was whether the statute required the adverse party to give notice when a trial date is advanced even if the adverse party has been previously notified of the original trial date. (*Id*. at p. 962.) In concluding that notice was required when a trial is advanced, the Supreme Court distinguished cases discussing continuances. (*Id*. at p. 965; see *People ex rel. San Francisco Bay Conservation etc. Com. v. Smith* (1994) 26 Cal.App.4th 113, 126-127, 129 [statute did not apply to continued trial date].) In recognizing this distinction, the Supreme Court reasoned: "When a trial, previously set for one date, is continued to a later date, the absent party's opportunities to plan and prepare for trial and to be present at trial are unlikely to be harmed, for it will have completed its preparations by the previously scheduled date. This is true even if the party is unaware of the continuance, for in that case it will have completed its preparations by the original trial date and simply by appearing at that time it will learn of the new time for trial." (*Au-Yang v. Barton*, *supra*, at p. 965.)

Mu and Topolewski do not address whether they had notice of the August 3, 2010 trial date, but that date was set on April 19, 2010, when they were represented by counsel. Moreover, they were given actual notice of the August 3, 2010 trial date in connection with the motion to be relieved as counsel, and in the order granting that motion, and evidently failed to keep informed thereafter through diligent inquiry of subsequent continuances.

Section 594, subdivision (a) does not apply to a continued trial date. (*People ex rel. San Francisco Bay Conservation etc. Com. v. Smith*, *supra*, 26 Cal.App.4th at pp. 126-127.) Even if unaware of the continuance, simply by appearing on the scheduled trial date, Mu and Topolewski would have learned that the trial had been continued to August 19, 2010.

In any event, Mu and Topolewski were timely served with notice of the continued trial date at the Singapore address they gave to their former attorney. They contend in

their brief, however, that the Singapore address was not valid. There is no evidence in the record to support this assertion. Their former attorney represented to the court that he served his clients with the motion to be relieved as counsel at the Singapore address that "they gave him." When the court asked counsel if this was his clients' "last known business address," counsel responded: "I do not know that, your honor. All I know is that that is the address that I was given by both the individuals Hong Mu and David Topolewski to send documentation." Because Adams sent the notice of trial continuance 15 days before trial to the office address as last given by Mu and Topolewski to their attorney, and that address appeared on the motion to be relieved as counsel filed in this action and served on Adams, Adams complied with the mandatory notice requirements set forth in Code of Civil Procedure section 594, subdivisions (a) and (b).[8]

2. *The Court Used an Improper Method to Value Adams's 19.7 Percent Interest*

For closely held corporations, there is no market value, and courts must ascertain a hypothetical market value. (*In re Marriage of Hewitson* (1983) 142 Cal.App.3d 874, 882 (*Hewitson*).) One method to determine fair market value is the price-earnings ratio of publicly traded corporations.[9] (*Ibid*.) In *Hewitson*, each party's expert valued the couple's closely held corporation using the price-earnings ratio method. (*Id.* at p. 879.) The *Hewitson* court held that the price-earnings method may be used to determine the value of a closely held corporation, but that it cannot be the sole method relied upon for such valuation. (*Id.* at pp. 885-886.) Appellants contend the trial court, by accepting Vavoulis's valuation, erred as a matter of law by solely relying on a comparison of the

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[8] We reject appellants' contention that the mandatory notice requirement is not met unless the adverse party receives confirmation of a valid address. There is no statutory basis for that contention, and it is contrary to the service requirements set forth in Code of Civil Procedure section 594, subdivision (b).

[9] Fair market value is " 'the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell' and both having reasonable knowledge of relevant facts." (*Hewitson*, *supra*, 142 Cal.App.3d at p. 882, fn. 8.)

financial data of publicly held corporations to value Adams's minority interest (19.7 percent) in EXPL. We agree.

a. *Standard of Review*

Although Adams contends the standard of review is substantial evidence, we do not resolve the valuation issue by looking at the facts, but rather by considering whether, in relying on Vavoulis's valuation methodology, the trial court committed legal error. " 'Questions of fact concern the establishment of historical or physical facts; their resolution is reviewed under the substantial-evidence test.' [Citation.] . . . [Citation.] [¶] 'Questions of law relate to the selection of a rule; their resolution is reviewed independently.' [Citation.] . . . ." (*Bono v. Clark* (2002) 103 Cal.App.4th 1409, 1421.)[10]

b. Hewitson *Adopted a Multi-Factor Test*

In *Hewitson*, experts attempted to determine the hypothetical fair market value of a closely held corporation wholly owned by the parties by using the price-earnings ratio of publicly traded companies. (*Hewitson, supra,* 142 Cal.App.3d at p. 879.) The price-earnings method compares actual revenue of a closely held company to revenue of a publicly traded company with a known value. The public company's price to earnings ratio is multiplied by the actual revenue of the closely held corporation to determine a hypothetical market value.[11] (*Id.* at p. 882, fn. 7.) The *Hewitson* court held that because

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[10] Adams challenges Mu's and Topolewski's right to appeal from this judgment. We recognize that the failure to move for a new trial ordinarily precludes a party from complaining on appeal that the damages awarded were either excessive or inadequate, but this failure "does not preclude a party from urging legal errors in the trial of the damage issue such as erroneous rulings on admissibility of evidence, errors in jury instructions, or failure to apply the proper legal measure of damages." (*Glendale Fed. Sav. & Loan Assn. v. Marina View Heights Dev. Co.* (1977) 66 Cal.App.3d 101, 122.)

[11] Once the hypothetical fair market value of the corporation is obtained, then there is an additional step to value a share of stock based upon the outstanding shares. In *Hewitson*, the experts determined the value of the corporation because it was wholly owned by the parties and valuation was necessary to determine the division of community property. (*Hewitson, supra,* 142 Cal.App.3d at pp. 878-879.) Here, rather than valuing a share of stock, the court was concerned with valuing Adams's minority interest.

of the differences between a public and closely held corporation, the trial court could not solely rely on the price-earnings method. Instead, *Hewitson* adopted a multi-factor test to determine a hypothetical fair market value, citing the factors listed in the Internal Revenue Service Revenue Ruling 59-60 (Rev. Rul. 59-60, 1959-1 C.B. 237 (Revenue Ruling 59-60)), which included as one of the factors a comparison of publicly held corporations. (*Hewitson, supra*, at p. 888.)[12]

Hewitson also discussed the historical methods used to determine investment value,[13] and the difference between investment value and market value. (*Hewitson, supra,* 142 Cal.App.3d at pp. 881-883; see also *Ronald v. 4-C's Electronic Packaging, Inc*. (1985) 168 Cal.App.3d 290, 298-299.) "This difference was observed in *Estate of Rowell, supra,* which involved the net worth valuation of closely held shares, where the court stated that the fair market value is 'quite distinct from the ratio between the number of shares issued and the book value, of the value of the corporation's property.' (132 Cal.App.2d at p. 429.)" (*Hewitson, supra,* at p. 882.)

In *Ronald v. 4-C's Electronic Packaging, Inc*., *supra*, 168 Cal.App.3d 290, the court considered the method to determine the investment value of a minority interest in a closely held corporation to permit the majority shareholders to buy out that interest and avoid the involuntary dissolution of the corporation. (*Id*. at pp. 298-299.) The *Ronald* court discussed a valuation methodology that included five approaches, which employed

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[12] The *Hewitson* court listed these factors: " '(a) The nature of the business and the history of the enterprise from its inception. [¶] '(b) The economic outlook in general and the condition and outlook of the specific industry in particular. [¶] '(c) The book value of the stock and the financial condition of the business. [¶] '(d) The earning capacity of the company. [¶] '(e) The dividend-paying capacity. [¶] '(f) Whether or not the enterprise has goodwill or other intangible value. [¶] '(g) Sales of stock and the size of the block of stock to be valued. [¶] '(h) *The market price of stocks of corporations engaged in the same or similar line of business having their stocks actively traded in a free and open market, either on an exchange or over-the-counter*.' (Italics added.)" (*Hewitson, supra*, 142 Cal.App.3d at p. 883, fn. 9.)

[13] These methods included capitalization of earnings, dividend paying capacity, and book value or net asset value. (*Hewitson, supra,* 142 Cal.App.3d at pp. 881-882.)

all of the factors in Revenue Ruling 59-60.[14] (*Ronald v. 4-C's Electronic Packaging, Inc*., *supra*, at p. 299.) The five valuation approaches in combination "will determine the value of a minority interest in a closely held corporation" for purposes of determining investment value, that is, the price per share to purchase the minority interest. (*Id*. at pp. 299-300.)

Vavoulis used a "direct public company approach," to value Adams's minority interest in EXPL. Vavoulis obtained a multiple by comparing the financial statements of similar publicly held corporations and multiplied EXPL's projected revenue by that multiple to value EXPL at $318 million. His multiple was 2.6, the same multiple that McNulty used when employing the price-earnings valuation method. Even though Vavoulis testified regarding EXPL's expected growth, and the viability of the market, Vavoulis used that information to confirm his estimated value, not to determine fair market or investment value.

Adams contends that *Hewitson* is inapplicable because the issue in that case was the fair market value of a closely held corporation wholly owned by the parties, not the value of a minority interest. Adams also argues that even if *Hewitson* applied, Vavoulis did not use the price-earnings method because he relied upon a multiple that was less than the one obtained from comparable public corporations. We reject these arguments. *Ronald v. 4-C's Electronic Packaging, Inc*., *supra*, 168 Cal.App.3d at pp. 300-301 addressed valuing a minority interest, and the court agreed with *Hewitson* that relying solely on comparisons of publicly held corporations was prejudicial error. Moreover, Vavoulis's downward adjustment of the multiple does not otherwise validate an improper

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[14] "These valuation approaches, employing all of the factors of Revenue Ruling 59-60, are adjusted net worth, capitalization of income stream, capitalization of earnings before interest and tax, discounted cash flow, and market comparables." (*Ronald v. 4-C's Electronic Packaging, Inc., supra*, 168 Cal.App.3d at p. 299.)

valuation method since "there are enormous differences between the two types of corporations."[15] (*Hewitson, supra*, 142 Cal.App.3d at p. 880.)

Adams maintains that Vavoulis used the capitalization of earnings approach, one acceptable method of determining investment value. The "capitalization of earnings" method is "used primarily to calculate earnings value, [and] requires the multiplication of the 'normal earnings' of the corporation by a capitalization rate (multiplier) which reflects the stability of the past and the predictability of the future corporate earnings." (*Hewitson, supra*, 142 Cal.App.3d at p. 881 & fn. 3, see also *Ronald v. 4-C's Electronic Packaging, Inc., supra*, 168 Cal.App.3d at p. 299, fn. 4.) Vavoulis did not describe his multiple as a capitalization rate, but as "the median multiple of revenues" obtained by reviewing the financial information of publicly held corporations.

Next, Adams contends his testimony addressing earnings, performance, and the infusion of venture capital into EXPL and related entities, established the market value of his 19.7 percent interest in EXPL. There is no indication in the record that Vavoulis or the trial court relied on Adams's information to value his interest at $62 million. Indeed, Adams criticized Vavoulis's valuation because he did not take into account certain actual revenue streams that Adams believed increased the value of EXPL. The trial court stated it accepted Vavoulis's method. Because Vavoulis's valuation was based solely on financial comparisons of publicly held corporations, the trial court erred as a matter of law in accepting his valuation of Adams's 19.7 percent interest in EXPL.

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[15] Adams focuses on the *Hewitson* court's statement that there is not one applicable formula to determine the fair market value of a closely held corporation. Adams neglects to cite the following sentences: "It is, therefore, incumbent upon a court faced with such a problem to review each factor that might have a bearing upon the worth of the corporation and hence upon the value of the shares. Unless there is some statutory or decisional proscription on their use, the factors listed in Revenue Ruling 59-60 . . . should be consulted and used to evaluate closely held stock." (*Hewitson, supra*, 142 Cal.App.3d at p. 888.)

Although we resolve the valuation question on legal grounds, we realize, as the trial court did, that even using acceptable valuation methodology it is virtually impossible to determine the value of Adams's 19.7 percent interest in EXPL and related entities without financial data. Adams has represented in these appellate proceedings that he propounded discovery requests and issued subpoenas to obtain financial documents from Mu and Topolewski, and has yet to obtain the requested information. In concluding that the trial court relied on an improper valuation method, we follow the law even though it seems inequitable that Mu and Topolewski, who failed to abide by the judicial process and did not show up for trial, benefit from this legal error. Our legal conclusion is not a "win" for Mu and Topolewski, and we do not intend to reward them for their litigation conduct, which inexplicably included the failure to inquire about the status of their case after their attorney had been relieved as counsel. If Mu and Topolewski do not comply with discovery requests on remand, or engage in any conduct to further delay a resolution of this action, we are confident that the trial court will issue the necessary orders, and if appropriate, sanctions for noncompliance. Under no circumstance would it be equitable or just to conduct a second trial on the valuation of Adams's 19.7 percent interest without the financial documents to which Adams is entitled to obtain in discovery.

DISPOSITION

The judgment awarding Adams damages in connection with the determination of the value of his 19.7 percent interest in EXPL and related entities is reversed and remanded for a new trial. In all other respects, the judgment is affirmed. No costs are awarded on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.